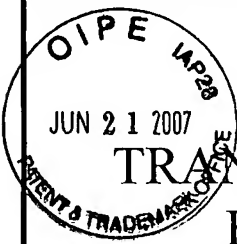
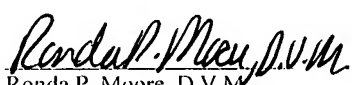


TRANSMITTAL FORM		Application Serial Number					
		10/007,031					
		Filing Date					
		November 8, 2001					
		First Named Inventor					
		Blouin <i>et al.</i>					
		Group Art Unit					
1743							
Examiner Name							
Alexander, Lyle							
Attorney Docket No.							
INL-032							
Confirmation No.							
2442							
ENCLOSURES (check all that apply)							
<input checked="" type="checkbox"/> Fee Transmittal Form (1 pg.) <input checked="" type="checkbox"/> Check attached in the amount of \$500.00 <input type="checkbox"/> Copy of Fee Transmittal Form  <input type="checkbox"/> Amendment/Response <input type="checkbox"/> Preliminary <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Letter to Official Draftsperson including Drawings [Total Sheets ____]  <input type="checkbox"/> Petition for Extension of Time  <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Form PTO-1449 <input type="checkbox"/> Copies of IDS Citations  <input type="checkbox"/> Certified Copy of Priority Document(s)  <input type="checkbox"/> Sequence Listing submission <input type="checkbox"/> Paper Copy/CD <input type="checkbox"/> Computer Readable Copy <input type="checkbox"/> Statement verifying identity of above				<input type="checkbox"/> Copy of Notice to File Missing Parts of Nonprovisional Application  <input type="checkbox"/> Formal Drawing(s)  <input type="checkbox"/> Request For Continued Examination (RCE) Transmittal  <input type="checkbox"/> Power of Attorney (Revocation of Prior Powers)  <input type="checkbox"/> Terminal Disclaimer  <input type="checkbox"/> Executed Declaration and Power of Attorney for Utility or Design Patent Application  <input type="checkbox"/> Small Entity Statement  <input type="checkbox"/> CD(s) for large table or computer program  <input type="checkbox"/> Amendment After Allowance  <input type="checkbox"/> Request for Certificate of Correction <input type="checkbox"/> Certificate of Correction (in duplicate)		<input type="checkbox"/> Notice of Appeal to Board of Patent Appeals and Interferences  <input checked="" type="checkbox"/> Brief in Support of an Appeal (15 pgs.)  <input type="checkbox"/> Status Inquiry  <input checked="" type="checkbox"/> Return Receipt Postcard  <input type="checkbox"/> Certificate of First Class Mailing under 37 C.F.R. 1.8  <input type="checkbox"/> Certificate of Facsimile Transmission under 37 C.F.R. 1.8  <input type="checkbox"/> Additional Enclosure(s) (please identify below)	
CORRESPONDENCE ADDRESS		SIGNATURE BLOCK					
Direct all correspondence to: Patent Administrator Kirkpatrick & Lockhart Preston Gates Ellis LLP State Street Financial Center One Lincoln Street Boston, MA 02111-2950 Tel. No.: (617) 261-3100 Fax No.: (617) 261-3175		Respectfully submitted,   Ronda P. Moore, D.V.M. Attorney for the Applicants Kirkpatrick & Lockhart Preston Gates Ellis LLP State Street Financial Center One Lincoln Street Boston, MA 02111-2950  Date: June 21, 2007 Reg. No.: 44,244 Tel. No.: (617) 261-3167 Fax No.: (617) 261-3175					



# **FREE TRANSMITTAL** **FY 2007**

Complete if Known

Application Serial Number	10/007,031
Filing Date	November 8, 2001
First Named Inventor	Blouin
Group Art Unit	1743
Examiner Name	Alexander, Lyle
Attorney Docket No.	INL-032
Confirmation No.	2442

## **METHOD OF PAYMENT**

1. ☒ Payment Enclosed:  
☒ Check ☐ Money Order ☐ Other
2. ☒ The Commissioner is hereby authorized to credit or charge any fee indicated below for this submission to Deposit Account No. 50-1721.  
☐ Required Fees (copy of this sheet enclosed).  
☒ Additional fee required under 37 CFR 1.16 and 1.17.  
☒ Overpayment Credit.
3. ☐ Applicant claims small entity status.

## **FEE CALCULATION**

### **1. FILING/SEARCH/EXAM/SIZE FEES**

Large Entity Fee (\$)	Fee Description	Fee Paid
300	Utility filing fee	
500	Utility search fee	
200	Utility exam fee	
250	Utility size fee (each add'l 50 pgs. over 100)	
200	Design filing fee	
100	Design search fee	
130	Design exam fee	
250	Design size fee (each add'l 50 pgs. over 100)	

	Number Filed	Number Extra	Rate	Amount
Total Claims	- 20 =		x \$ 50.00 =	
Independent Claims	- 3 =		x \$200.00 =	
<input type="checkbox"/> Multiple Dependent Claim(s), if any \$360.00 =				
TOTAL:				
SMALL ENTITY DISCOUNT:				
SUBTOTAL (1)				(\$ 0.00)

### **2. AMENDMENT CLAIM FEES**

Claims Remaining After Amend.	Highest No. Previously Paid For	Present Extra	Rate	Fee Paid
Total	-	=	x \$ 50.00 =	
Indep.	-	=	x \$200.00 =	
<input type="checkbox"/> First Presentation of Multiple Dep. Claim + \$360.00 =				
TOTAL:				(\$)
SMALL ENTITY DISCOUNT:				(\$)
SUBTOTAL (2)				(\$ 0.00)

## **FEE CALCULATION (continued)**

### **3. ADDITIONAL FEES**

Large Entity Fee (\$)	Small Entity Fee (\$)	Fee Description	Fee Paid
130	65	Surcharge - late filing fee or oath	
50	25	Surcharge - late provisional filing fee or cover sheet	
130	130	Non-English specification	
2,520	2,520	Request for ex parte reexamination	
120	60	Extension for reply within first month	
450	225	Extension for reply within second month	
1020	510	Extension for reply within third month	
1590	795	Extension for reply within fourth month	
2160	1080	Extension for reply within fifth month	
500	250	Notice of Appeal	
500	250	Filing a brief in support of an appeal	500.00
1000	500	Request for oral hearing	
400	400	Petitions to the Commissioner (Gp. I)	
200	200	Petitions to the Commissioner (Gp. II)	
130	130	Petitions to the Commissioner (Gp. III)	
180	180	Submission of Information Disclosure Statement	
790	395	Filing a submission after final rejection (37 CFR 1.129(a))	
790	395	For each additional invention to be examined (37 CFR 1.129(b))	
100	100	Certificate of Correction for applicant's error	
130	65	Submission of Terminal Disclaimer	

SUBTOTAL (3) (\$ 500.00)

SUBTOTAL (1) 0.00

SUBTOTAL (2) 0.00

SUBTOTAL (3) 500.00

TOTAL (\$ 500.00)

## **CORRESPONDENCE ADDRESS**

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Patent Administrator  
 Kirkpatrick & Lockhart Preston  
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 One Lincoln Street  
 Boston, MA 02111-2950  
 Tel. No.: (617) 261-3100  
 Fax No.: (617) 261-3175

## **SIGNATURE BLOCK**

Date: June 21, 2007  
 Reg. No.: 44,244  
 Tel. No.: (617) 261-3167  
 Fax No.: (617) 261-3175

Respectfully submitted,  
*Ronda P. Moore, D.V.M.*  
 Ronda P. Moore, D.V.M.  
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PATENT  
Attorney Docket No.: INL-032

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPELLANTS: Blouin *et al.* CONFIRMATION NO.: 2442  
APPLICATION NO.: 10/007,031 GROUP NO.: 1743  
FILING DATE: November 8, 2001 EXAMINER: Alexander, Lyle  
TITLE: Sample Well Strip

Mail Stop Appeal Brief-Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**BRIEF IN SUPPORT OF AN APPEAL**

Dear Sir:

This is an appeal from the final rejection of claims 1, 3-10, 12-16, and 27-35, as amended by Appellants under 37 C.F.R. § 1.116 and filed with the U.S. Patent and Trademark Office (USPTO) on October 23, 2006. The claims were finally rejected in a Final Office Action, mailed from the USPTO on January 18, 2007.

This Appeal Brief is submitted pursuant to the provisions of 37 C.F.R. § 41.37 and pursuant to the Notice of Appeal filed by the Appellants pursuant to 37 C.F.R. § 41.31(a), received in the USPTO on April 23, 2007. Appellants include herewith a check in the amount of \$500.00 to cover the appeal brief submission fee pursuant to 37 C.F.R. §§ 41.20(b)(2) and 41.37(a)(2). Appellants believe no other fees are necessary for consideration of this paper. However, if a further fee is required, please consider this a conditional petition therefore and authorization to charge Deposit Account No. 50-1721.

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500.00 0P

I. REAL PARTY IN INTEREST

The real party in interest is Instrumentation Laboratory Company, which owns the entire right, title, and interest in the instant application by virtue of assignment from the inventors of the instant application. The assignment from the inventors to Instrumentation Laboratory Company was executed by Matthew R. Blouin on September 7, 2001, and by Robert R. Fisette on August 24, 2001, and recorded in the U.S. Patent and Trademark Office on September 23, 2002, at Reel No. 013318, Frame No. 0189.

II. RELATED APPEALS AND INTERFERENCES

The Appellants, the Assignee, and the undersigned Attorney are not aware of any appeals, interferences, or judicial proceedings which may be related to, directly affect, or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF THE CLAIMS

Claims 1, 3-10, 12-16, and 27-35 are currently pending in this application and stand rejected. Claims 2, 11, and 17-26 were canceled prior to issuance of the January 18, 2007, Final Office Action. Accordingly, Appellants appeal the rejection of claims 1, 3-10, 12-16, and 27-35. The claims on appeal are provided in the attached appendix.

IV. STATUS OF AMENDMENTS

Appellants have filed no amendments to the claims subsequent to the final rejection of claims 1, 3-10, 12-16, and 27-35 as outlined in the Final Office Action, mailed from the USPTO on January 18, 2007.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

Independent claim 1 is directed to a sample holder system for holding a plurality of samples of use in an automated sample analyzer. The sample holder system comprises a first well strip and at least a second well strip.

The first well strip comprises a plurality of connected wells arranged in a linear array. Each well is physically connected to an adjacent well. Each of the plurality of wells is for containing a fluid sample. The first well strip also comprises a first end, a second end, side walls, a first engagement piece, and a second engagement piece. The first and second engagement pieces are disposed on the same side wall of the first well strip.

The second well strip comprises a plurality of connected wells arranged in a linear array. Each well is physically connected to an adjacent well. Each of the plurality of wells is for containing a fluid sample. The second well strip also comprises a first end, a second, and a second engagement piece identical to the second engagement piece of the first well strip. The first engagement piece disposed on the first well strip and the second engagement piece disposed on the second well strip connect together to reversibly attach the first well strip to the second well strip to form a sample holder system.

Support for independent claim 1 is found throughout the application as originally filed, at least, for example, at page 1, lines 19-23; at page 4, lines 23-25; at page 5, lines 19-23; at page 8, lines 1-14; and in FIGS. 1, 2, 3C, and 4, reference characters 101, 108a-d, 111, 121, 124, 200, 201, 300, 301.

Independent claim 12 is directed to an interlockable well strip. The interlockable well strip comprises a first wall and a second wall. The interlockable well strip further comprises a plurality of connected wells arranged in a linear array. Each well is physically connected to an adjacent well and is for containing a fluid sample.

The well strip also comprises a first engagement piece on the first wall of the well strip capable of interlocking another well strip and a first engagement piece on the second wall of the well strip capable of interlocking another well strip. The first engagement piece on the first wall of the well strip is identical to the first engagement piece on said second wall of the well strip.

Support for independent claim 12 is found throughout the application as originally filed, at least, for example, at page 1, lines 8-13; at page 5, lines 19-23; at page 8, lines 1-8; and in FIGS. 1, 2, 3C, and 4, reference characters 101, 103, 108a-d, 111, 200, and 201.

Independent claim 27 is directed to a sample holder system comprising a first well strip and at least a second well strip. The first well strip comprises a first and second side wall, a first

and second end, and a plurality of connected wells arranged in a linear array. Each well is physically connected to an adjacent well and is for containing a fluid sample.

The second well strip comprises a first and second side wall, a first and second end, and a plurality of connected wells arranged in a linear array. Each well is physically connected to an adjacent well and is for containing a fluid sample.

Each of the first and second well strips further comprises a first flange on the first end of the first side wall and a first flange on the second end of the second side wall. The first flange on the first end of the first side wall is identical to the first flange on the second end of the second side wall.

Each of the first and second well strips further comprises a first slot on the second end of the first side wall, and a first slot on the first end of the second side wall. The first slot on the second end of the first side wall is identical to the first slot on the first end of the second side wall. The first slot and the first flange of the second side wall of the first well strip interlocks with the first flange and the first slot of the first side wall of the second well strip to form a sample holder system.

Support for independent claim 27 is found throughout the application as originally filed, at least, for example, at page 1, lines 8-13; at page 4, lines 23-25; at page 5, lines 19-23; at page 5, line 24 to page 6, line 10; at page 7, lines 5-17; at page 8, lines 1-8; and in FIGS. 1, 2, 3C, and 4, reference characters 101, 103, 108a-d, 111, 112, 121, 124, 200, 201, 300, and 301.

Independent claim 35 is directed to a sample holder system. The sample holder system comprises a first well strip and at least a second well strip. The first well strip comprises a first and second side wall, a first and second end, and a plurality of wells for containing a fluid sample. Each well is physically connected to an adjacent well and comprises a base and the first and second side wall.

The second well strip comprises a first and second side wall, a first and second end, and a plurality of wells for containing a fluid sample. Each well is physically connected to an adjacent well and comprises a base and the first and second side wall.

Each of the first and at least second well strips further comprises a first flange on the first end of the first side wall and a first flange on the second end of the second side wall. The first

flange on the first end of the first side wall is identical to the first flange on the second end of the second side wall.

Each of the first and at least second well strips also further comprises a first slot on the second end of the first side wall, and a first slot on the first end of the second side wall. The first slot on the second end of the first side wall is identical to the first slot on the first end of the second side wall. Further, the first slot and the first flange of the second side wall of the first well strip interlocks with the first flange and the first slot of the first side wall of the second well strip to form a sample holder system.

Support for independent claim 35 is found throughout the application as originally filed, at least, for example, at page 1, lines 8-13; at page 4, lines 19-25; at page 5, line 19-page 6, line 10; at page 8, lines 1-14; at page 8, line 23-page 9, line 2; at page 10, lines 6-10; and in FIGS. 1, 2, 3C, and 4, reference characters 101, 103, 108a-d, 111, 112, 121, 124, 200, 201, 300, 301.

#### VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

One ground of rejection raised by the Examiner during prosecution is to be reviewed on appeal. It is:

(1) rejection of claims 1, 3-10, 12-16, and 27-35 under 35. U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,285,907 to Franchere *et al.* ("Franchere").

#### VII. APPELLANTS' ARGUMENT

(1) Rejection of claims 1, 3-10, 12-16, and 27-35 under 35. U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,285,907 to Franchere *et al.* ("Franchere")

Claims 1, 3-10, 12-16, and 27-35 stand rejected under 35. U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,285,907 to Franchere *et al.* ("Franchere"). Appellants respectfully traverse the rejection.

Claims 1, 3-10, 12-16, and 27-34

Claims 1, 3-10, 12-16, and 27-34 stand rejected under 35 U.S.C. 102(b) as allegedly anticipated by U.S. Patent No. 5,285,907 to Franchere *et al.* (“Franchere”). Appellants traverse the rejection.

It is well settled law that an anticipating reference must teach each and every element of a claimed invention. *Glaxo, Inc. v. Novopharm Ltd.*, 52 F.3d 1043, 1047, 35 USPQ2d 1565 (Fed. Cir. 1995). Appellants submit that Franchere does not teach each and every element of the claimed invention. Therefore, for the reasons outlined below, Franchere is an improper reference under 35 U.S.C. 102(b).

Independent claims 1, 12, and 27 each recite a well strip comprising a plurality of connected wells arranged in a linear array, wherein each well is physically connected to an adjacent well, each of said plurality of wells for containing a fluid sample therein.

Franchere teaches laboratory container support arrays, *e.g.*, test tube racks for “accommodating different size specimen containers...for handling in the laboratory” (abstract). The support arrays support the containers “thus avoiding the danger of dropping or spilling specimens” (abstract). Franchere teaches that these support arrays are composed of individual modular units that can be snapped together. The modular units themselves have a plurality of openings. The opening at the top of the modular unit serves as a guide for supporting an unconnected laboratory container, such as a tube. Each tube is supported by an opening at the top of the modular unit independent of another tube. The tubes, according to Franchere, can hold fluid samples. Franchere does not teach or even suggest that the modular units without the tubes could hold fluid samples. (See, *e.g.*, abstract, col. 1, lines 7-15; col. 1, lines 26-30; col. 1, lines 47-52; col. 3, lines 6-12 and 27-30; col. 4, lines 21-28).

In contrast to Appellants’ claimed invention, Appellants submit that Franchere does not teach wells for containing a fluid sample that are physically connected to an adjacent well.

While Franchere teaches that individual modular units can be “joined together to form a laboratory container support array” (col. 3, lines 10-12), Franchere’s modular units, absent the insertion of and presence of a tube or other container obtained from a source other than the modular unit, cannot contain a fluid sample as required by Appellants claimed invention. Franchere teaches that “each of the side wall panels [of the modular units] have openings” to



Claims 1, 3-10, 12-16, and 27-34

Claims 1, 3-10, 12-16, and 27-34 stand rejected under 35 U.S.C. 102(b) as allegedly anticipated by U.S. Patent No. 5,285,907 to Franchere *et al.* (“Franchere”). Appellants traverse the rejection.

It is well settled law that an anticipating reference must teach each and every element of a claimed invention. *Glaxo, Inc. v. Novopharm Ltd.*, 52 F.3d 1043, 1047 (Fed. Cir. 1995). Appellants submit that Franchere does not teach each and every element of the claimed invention. Therefore, for the reasons outlined below, Franchere is an improper reference under 35 U.S.C. 102(b).

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In contrast to Appellants’ claimed invention, Appellants submit that Franchere does not teach wells for containing a fluid sample that are physically connected to an adjacent well.

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reduce the quantity of material required for making the modular units, to reduce the weight of the unit, and to allow for “observation of a specimen in the container supported in the modular unit” (col. 3, lines 1-6). Appellants submit that if a fluid sample were placed directly in Franchere’s modular unit, the presence of holes in the side walls would logically allow the sample to spill through these holes. Accordingly, Appellants submit that a modular unit with holes in the side walls, as taught by Franchere, is not a well for containing fluid sample as required by Appellants’ claimed invention.

For the sake of argument, even if Franchere’s test tubes were in fact wells, Franchere fails to teach or suggest that these tubes are physically connected to an adjacent tube or tubes for holding fluid samples. For example, neither FIG. 1 of Franchere, which shows a modular unit before it is assembled, nor FIG. 2, which shows a modular unit after it is assembled, show physically connected test tubes or other containers for containing a fluid sample. Not one of the modular units depicted by Franchere nor the corresponding text discloses test tubes physically connected to an adjacent test tube for holding a fluid sample. Franchere’s modular units only have openings in the top surface such that each opening supports an individual tube placed therein after assembly of the modular unit (col. 3, lines 27-30; col. 4, lines 21-28). Accordingly, Appellants’ submit that Franchere fails to teach a well for containing a fluid sample that is physically connected to an adjacent well.

Appellants submit that while Franchere teaches that Franchere’s test tubes can hold fluid samples (see abstract), Franchere’s test tubes fail to meet the claimed limitation that each well for containing a fluid sample is physically connected to an adjacent well.

The Examiner has argued in the Final Office Action, dated January 18, 2007, that the tubes taught by Franchere are “physically connected to each other via the modular units that hold the tubes” (page 3). Appellants submit, however, that Franchere fails to teach any physical connection between Franchere’s test tubes and Franchere’s modular units. Franchere merely teaches that Franchere’s “tubes and/or containers containing specimens...sit in the individual openings [of the modular unit] for support” (col. 3, lines 27-30) or that Franchere’s tubes are “held and supported” by Franchere’s modular unit (col. 1, lines 53-58).

Other than “sitting in” or being “held” or “supported” by Franchere’s modular units, Franchere fails to teach any other interaction between Franchere’s modular unit and Franchere’s

test tubes. Given these teachings of Franchere, based on the Examiner's logic that Franchere's test tubes are physically connected to Franchere's modular unit because Franchere's tubes rest in Franchere's modular unit, any object that touches or is supported by another object because of the force gravity is physically connected to that object. Common sense tells us that this is not the case!

Further, Appellants submit that the Examiner's assertion that that Franchere's test tubes are physically connected to Franchere's modular unit is incorrect. As stated previously, Franchere only teaches that Franchere's test tubes "sit in" or are "held" or "supported" by Franchere's modular units. Franchere fails to teach any means of joining the test tube with modular unit. Accordingly, if Franchere's modular unit containing Franchere's test tube were turned sideways or upside-down, Franchere's test tube would fall out of Franchere's modular unit. Appellants submit that if Franchere's test tube were physically connected to Franchere's modular unit, in the manner that Appellants' wells are physically connected, the test tube would remain "connected" regardless of the orientation of Franchere's modular unit.

Further, Appellants submit that in contrast to the claimed invention, Franchere actually teaches away from making any physical connection between Franchere's test tubes and Franchere's modular units. For example, Franchere teaches that the modular units are "made in a single flat sheet form with a thickness range which allows for packaging many such units in a carton for shipping and subsequent erection by the user" (col. 4, lines 29-32). Appellants' submit that if Franchere's test tubes were connected to Franchere's modular units, such single flat sheet construction and space efficient packaging, as taught by Franchere, would not be possible.

In addition, Appellants submit that Franchere teaches away from a physical connection between Franchere's modular units and Franchere's test tubes on additional grounds. For example, Franchere teaches that Franchere's modular units are used to support specimens "received by the laboratory for subsequent handling" (col. 3, lines 12-14; see also col. 1, lines 41-45; col. 4, lines 21-28). In addition, Franchere states that "it [is] most important for the laboratory technician to be able to quickly arrange for the support of large quantities of containers or tubes which arrive in the laboratory for handling" (col. 1, lines 41-44). In other words, test tubes filled with samples arrive in the laboratory. The laboratory technician then

arranges for the support of the tubes by placing the tubes in Franchere's modular units. The tubes rest in the modular units until the tubes are handled, *e.g.*, taken from the modular units to an instrument for testing.

If the test tubes were physically connected to Franchere's modular units, the physical connection asserted by the January 18, 2007, Final Office Action at pages 2-3 would prevent the tubes from being removed for subsequent testing. Rather, in order to move a specimen from the location of the modular unit having physically connected tubes, the specimen itself would have to be removed, *e.g.*, by aspiration or pouring from the original tube and placed in an empty free tube. Such additional steps would increase the risk of dropping or spilling the specimen, a problem that Franchere's invention was designed to avoid (See abstract).

Additionally, if test tubes were physically connected to Franchere's modular units, as asserted in the January 18, 2007, Final Office Action at pages 2-3, the modular units would not be able to accommodate new test tubes arriving with patient samples as described by Franchere at, for example, column 4, lines 21-28, as Franchere's modular unit would already be filled by test tubes. Consequently, samples from the arriving test tubes would have to be transferred from the arriving test tube to the physically connected tube that is part of the modular unit. This additional step would again increase the risk of dropping or spilling the specimen, a problem Franchere was attempting to avoid (See abstract).

For these reasons, Appellants submit that Franchere does not teach or suggest a well strip comprising a plurality of wells, each well physically connected to an adjacent well for containing a fluid sample therein as required by independent claims 1, 12, and 27. Consequently, Appellants submit that Franchere is an improper reference under 35 U.S.C. 102(b). Appellants therefore respectfully request reconsideration and withdrawal of the rejection of independent claim 1, and claims 3-10 and 28-31 depending from claim 1; independent claim 12, and claims 13-16 and 32-34 depending from claim 12; and independent claim 27.

#### Claim 35

Claim 35 recites a sample holder system comprising a first well strip comprising a plurality of wells for containing a fluid sample therein, and a first and second side wall. Each well is physically connected to an adjacent well and each of the plurality of wells for containing

the fluid sample comprises a base and said first and second side wall. There is a first flange on the first end of the first side wall and a first flange on the second end of the second side wall.

Appellants submit that claim 35 is patentable in view of Franchere. Firstly, claim 35 recites that the wells are for containing a fluid sample. As discussed above, Appellants submit that the modular unit of Franchere cannot hold a fluid sample due to the holes in the side walls that would cause the fluid sample to leak out of the modular unit.

Secondly, even if, *arguendo*, Franchere's test tubes are wells, which Appellants submit they are not, Franchere does not teach that Franchere's test tubes are physically connected to an adjacent test tube for the reasons discussed *supra*.


Furthermore, claim 35 requires that each of the plurality of wells for containing a fluid sample each comprise a base and the first and second side wall of the well strip. As recited in the claim, the first side wall has a flange and the second side wall has a flange. Appellants submit that Franchere does not teach a well for containing a fluid sample wherein each well comprises a base and the first and second side wall of the well strip, the first and second side wall having flanges. According to the teachings of Franchere, only Franchere's test tubes and not Franchere's modular unit are able to hold fluid samples. Further, Franchere's test tubes do not have flanges. Accordingly, in addition to the arguments raised above, neither Franchere's modular unit nor Franchere's test tube anticipate claim 35 at least because the modular unit does not contain fluid and the test tube does not have flanges.

For these reasons, Appellants submit that claim 35 is patentable in view of Franchere under 35 U.S.C. § 102(b).

Respectfully submitted,

Date: June 21, 2007  
Reg. No.: 44,244

Tel. No.: (617) 261-3167  
Fax No.: (617) 261-3175

  
\_\_\_\_\_  
Ronda P. Moore, D.V.M.  
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Kirkpatrick & Lockhart Preston Gates Ellis LLP  
State Street Financial Center  
One Lincoln Street  
Boston, Massachusetts 02111-2950

## **CLAIMS APPENDIX**

1. (Previously Presented) A sample holder system for holding a plurality of samples for use in an automated sample analyzer, comprising:

a first well strip comprising

a plurality of connected wells arranged in a linear array, wherein each well is physically connected to an adjacent well, each of said plurality of wells for containing a fluid sample therein;

a first end; a second end; side walls; a first engagement piece; and a second engagement piece, wherein said first and second engagement pieces are disposed on the same side wall of the first well strip; and

at least a second well strip comprising

a plurality of connected wells arranged in a linear array wherein each well is physically connected to an adjacent well, each of said plurality of wells for containing a fluid sample therein;

a first end; a second end; and a second engagement piece identical to the second engagement piece of the first well strip; wherein the first engagement piece disposed on said first well strip and the second engagement piece disposed on the second well strip connect together to reversibly attach said first well strip to said second well strip to form a sample holder system.

2. (Canceled)

3. (Previously Presented) The sample holder system of claim 1 wherein said first well strip and said second well strip are identical.

4. (Previously Presented) The sample holder system of claim 1 wherein said first engagement piece of said first well strip is positioned substantially adjacent the first end of the first well strip, the second engagement piece of said first well strip is positioned substantially adjacent the second end of said first well strip, and said second engagement piece of said second well strip is positioned substantially adjacent the first end of said second well strip.

5. (Previously Presented) The sample holder system of claim 1 wherein said first engagement piece and said second engagement piece of said first well strip are positioned on a first side wall of said first well strip and said second engagement piece of said second well strip is positioned on a second side wall of said second well strip.
6. (Previously Presented) The sample holder system of claim 1 wherein said first engagement piece of said first well strip and said second engagement piece of said second well strip are reversibly interlockable by horizontally sliding said first well strip relative to said second well strip.
7. (Previously Presented) The sample holder system of claim 1 further comprising a first engagement piece of said second well strip identical to the first engagement piece of the first well strip positioned on a same side wall as the second engagement piece of the second well strip.
8. (Previously Presented) The sample holder system of claim 1 wherein said first engagement piece comprises a flange and said second engagement piece comprises a slot and a slit.
9. (Previously Presented) The sample holder system of claim 1 wherein said first engagement piece is positioned at the first end of the first well strip and comprises a flange, and said second engagement piece is positioned at said second end of said second well strip and comprises a slot and a slit.
10. (Previously Presented) The sample holder system of claim 7 wherein said second engagement piece of the second well strip comprises a slot and said first engagement piece of the second well strip comprises a flange.
11. (Canceled)
12. (Previously Presented) An interlockable well strip, comprising:
  - a first wall on said well strip;
  - a second wall on said well strip;

said well strip further comprising a plurality of connected wells arranged in a linear array wherein each well is physically connected to an adjacent well, each of said plurality of wells for containing a fluid sample therein;

a first engagement piece on said first wall of said well strip capable of interlocking another well strip; and

a first engagement piece on said second wall of said well strip capable of interlocking another well strip, wherein

said first engagement piece on said first wall of said well strip is identical to the first engagement piece on said second wall of said well strip.

13. (Previously Presented) The interlockable well strip of claim 12 wherein said first engagement piece on said first wall of said well strip is substantially positioned near a first end of said well strip and said first engagement piece on said second wall of said well strip is substantially positioned near a second end of said well strip.

14. (Previously Presented) The interlockable well strip of claim 12 wherein said first engagement piece on said first wall of said well strip is positioned on a first side wall of said well strip and said first engagement piece on said second wall of said well strip is positioned on a second side wall of said well strip.

15. (Previously Presented) The interlockable well strip of claim 12 wherein said first engagement piece on said first wall of said well strip comprises a flange and the first engagement piece on said second wall of said well strip comprises a flange.

16. (Previously Presented) The interlockable well strip of claim 13 further comprising a second engagement piece on a first wall of said well strip at said first end and a second engagement piece on a second wall of said well strip at said second end.

17-26. (Canceled)

27. (Previously Presented) A sample holder system comprising:



a first well strip comprising a plurality of connected wells arranged in a linear array wherein each well is physically connected to an adjacent well, each of said plurality of wells for containing a fluid sample therein, a first and second side wall, and a first and second end; and,

at least a second well strip comprising a plurality of connected wells arranged in a linear array wherein each well is physically connected to an adjacent well, each of said plurality of wells for containing a fluid sample therein, a first and second side wall, and a first and a second end;

each of said first well strip and said at least a second well strip further comprising a first flange on said first end of said first side wall and a first flange on said second end of said second side wall, wherein said first flange on said first end of said first side wall is identical to said first flange on said second end of said second side wall; and

a first slot on said second end of said first side wall, and a first slot on said first end of said second side wall, wherein said first slot on said second end of said first side wall is identical to said first slot on said first end of said second side wall; and wherein said first slot and said first flange of said second side wall of said first well strip interlocks with said first flange and said first slot of said first side wall of said second well strip to form a sample holder system.

28. (Previously Presented) The sample holder system of claim 1 wherein said first well strip and said second well strip reversibly attach by sliding a side wall of the first well strip longitudinally along a side wall of said second well strip.

29. (Previously Presented) The sample holder system of claim 1 wherein said wells each comprise an optical window.

30. (Previously Presented) The sample holder system of claim 29 wherein said optical window is clear.

31. (Previously Presented) The sample holder system of claim 30 wherein said optical window is substantially flat.

32. (Previously Presented) The interlockable well strip of claim 12 wherein said wells each comprise an optical window.

33. (Previously Presented) The interlockable well strip of claim 32 wherein said optical window is clear.

34. (Previously Presented) The interlockable well strip of claim 33 wherein said optical window is substantially flat.

35. (Previously Presented) A sample holder system comprising:

a first well strip comprising a plurality of wells for containing a fluid sample therein, a first and second side wall, and a first and second end, wherein each well is physically connected to an adjacent well and wherein each of said plurality of wells for containing a fluid sample therein comprises a base and said first and second side wall,

at least a second well strip comprising a plurality of wells for containing a fluid sample therein, a first and second side wall, and a first and second end, wherein each well is physically connected to an adjacent well and wherein each of said plurality of wells for containing a fluid sample therein comprises a base and said first and second side wall;

each of said first well strip and said at least a second well strip further comprising a first flange on said first end of said first side wall and a first flange on said second end of said second side wall, wherein said first flange on said first end of said first side wall is identical to said first flange on said second end of said second side wall; and

a first slot on said second end of said first side wall, and a first slot on said first end of said second side wall, wherein said first slot on said second end of said first side wall is identical to said first slot on said first end of said second side wall; and wherein said first slot and said first flange of said second side wall of said first well strip interlocks with said first flange and said first slot of said first side wall of said second well strip to form a sample holder system.